IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 165 OF 1993

Babu Rama Pawar (Chinchalkar)
& Anr. ..Petitioners
versus
Mrs. Kamal S. Salunkhe & Anr. ..Respondents

Mr. P. P. Chavan for the Petitioners.
Mr. S. K. Chinchalikar, AGP for the Respondents - State.

CORAM : D. G. DESHPANDE, J.
DATE : 17TH OCTOBER, 2006

ORAL ORDER :

1. Heard Counsel for the Petitioners. Respondents are served, nobody is present for them. AGP for the State is present, but he has no role to play because it is a dispute between tenant and the landlord.

2. Petitioner is the Tenant. The landlord has obtained Certificate under Section 88C of The Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act"). However, as required by Section 33A and 33B he did not apply for termination of tenancy for personal

cultivation and did not take any steps. Consequently initial proceedings were started against the landlord for restoration of the land to the tenant. They were stayed and again suo moto proceedings started. The Additional Tahsildar and A.L.T. Walwa by an order dated 20.11.1984 declared that half of the share in Survey No. 140/10 is sold to the tenants and fixed the purchase price. This price came to be challenged by the landlord before the Leave Reserve Deputy Collector, Sangli. Appeal was dismissed. The matter was carried to MRT by the landlord i.e. landlady and MRT allowed the Revision. Therefore, this petition.

3. Counsel for the petitioner drew my attention to the impugned order of MRT, particularly paragraph 4, portion of which is reproduced hereinbelow:

> **"As pointed out earlier, it is an admitted fact that the landlord in this case had succeeded in securing a certificate u/s. 88-C from the Tenancy Court. It was issued on 18.5.1983. In view of the fact that a certificate under that section had been issued, it automatically follows that the provisions of Sec.32 to 32-R of the Tenancy Act are not applicable in the present case. However, the provisions of Sec.32-C are still applicable and therefore it is necessary to see as to what are the consequences of various provisions of law in the Tenancy Act when applied in the present**

case. Section 33-C provides that a tenant of lands mentioned in Sec.88-C of the Tenancy Act still has got a right of purchase and he is deemed to have purchased the land under the circumstances mentioned in Sec.33-C. Firstly, it is necessary that the tenant should be actually cultivating the land personally. It is also necessary for the application of this section that the landlord should have committed a default in sending a notice of termination of tenancy in accordance with Sec.33-B(3) of the Tenancy Act. Admittedly, in this case, the tenants were personally cultivating the suit land and the landlord had committed a default in giving a notice of termination of tenancy as required by law. A reference to sec.33-B(3) shows that such a notice is required to be in writing and it is to be served before the first day of Jan.1962. Section 33-B (3)(b) is not applicable as no application u/s 88-C was pending on such a day. It is thus seen that by virtue of the provisions of Sec.33-C an excluded tenant gets a right of purchase that was extinguished by the certificate issued under sec.88-C. But this right cannot last indefinitely. Sec. 33-C(5) provides that the provisions of Sec. 32 to 32-R apply to the purchase of land by an excluded tenant under sec.33-C. It is also a well known fact that for securing the possession of such land the application is required to be filed before the Mamlatdar within a period of two years from the date on which the right to possession of the land is deemed to have been accrued."

4. Counsel for the petitioner contended that when all the findings are given by the MRT in favour of the tenant, then the observation and finding of the MRT that **"It is also a well known fact that for securing the possession of such land the application is required to be filed before the Mamlatdar within**

a period of two years from the date on which the right to possession of the land is deemed to have been accrued." And that in the present case the tenant did not make any such application within two years and therefore, there cannot be any deemed purchase by tenant under Section 33C of the Tenancy Act. Counsel for the petitioner states that right from the stage of obtaining Certificate under Section 88C possession of the land was and is still with the tenant, and, therefore, there was no question of tenant making any application for possession and no question of limitation arose.

5. I find considerable force in the submissions. There is nobody to contradict the statement of the tenant that right from the stage of 88C he is in possession and consequently when MRT itself gave findings in favour of the tenant as quoted above, the ultimate finding that tenant has failed to apply for possession within two years, is wrong and perverse. Consequently, Petition is required to be allowed.

6. In the result, the petition is allowed. Rule made absolute in terms of prayer (a) of the petition. Impugned order of the MRT is set aside

and those of both the courts below are maintained. No order as to costs.

(D.G. DESHPANDE, J.)